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**Vendor.**—Vendors who cannot furnish the purchasers with a perfect title are not entitled to specific performance.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. §§ 257-277; Dec. Dig. § 95.\* 12 Va.-W. Va. Enc. Dig. 598; 14 Va.-W. Va. Enc. Dig. 941; 15 Va.-W. Va. Enc. Dig. 917.]

**12. Vendor and Purchaser (§§ 126, 127\*)—Possession—Rents and Profits—Improvements.**—Where a vendor of land, after putting his purchaser into possession, was unable to give a marketable title, and thus obtain specific performance, the purchaser, upon exercising his privilege of rejecting the title, is chargeable with the rents and profits of the land during the time in which he was in possession and for any waste committed, but is entitled to credit for improvements.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 229, 230, 231, 232; Dec. Dig. §§ 126, 127.\* 11 Va.-W. Va. Enc. Dig. 986.]

**13. Costs (§ 12\*)—Imposition—Discretion of Court.**—The imposition of costs is in the discretion of the court.

[Ed. Note.—For other cases, see Costs, Cent. Dig. §§ 20, 22, 23; Dec. Dig. § 12.\* 3 Va.-W. Va. Enc. Dig. 608; 14 Va.-W. Va. Enc. Dig. 262; 15 Va.-W. Va. Enc. Dig. 229.]

Appeal from Circuit Court, Nelson County.

Bill by Sallie E. Woods and another against W. G. Goodloe and others. From the decree, defendants Goodloe and Mathews appeal. Affirmed.

*Coleman, Easley & Coleman*, of Lynchburg, for appellants.

*Caskie & Caskie* and *Whitehead & Whitehead*, all of Lynchburg, for appellees.

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#### JACOBS v. WARTHEN.

Nov. 20, 1913.

[80 S. E. 113.]

**1. Sales (§ 359\*)—Actions—Evidence—Sufficiency.**—In an action for the purchase price of horses, where defendant pleaded a breach of warranty, evidence held sufficient to support the judgment for plaintiff.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 511, 1056-1059; Dec. Dig. 359.\* 13 Va.-W. Va. Enc. Dig. 663; 14 Va.-W. Va. Enc. Dig. 1065; 15 Va.-W. Va. Enc. Dig. 1062.]

**2. Appeal and Error (§ 690\*)—Record—Questions Presented—Admission of Evidence.**—A bill of exceptions to the ruling of the

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

court on the admissibility of evidence is not sufficient, although it gives the questions asked the witness and his answers thereto, unless it contains sufficient of the preceding evidence to give the appellate court a clear apprehension of the propriety of the ruling.

[Ed. Note.—For other cases, see Appeal and Error, Dig. §§ 2897-2899, 2902-2904, 2906, 2908; Dec. Dig. § 690.\* 14 Va.-W. Va. Enc. Dig. 378; 14 Va.-W. Va. Enc. Dig. 420; 15 Va.-W. Va. Enc. Dig. 361.]

**3. Appeal and Error (§§ 970, 971\*)—Trial (§ 62\*)—Witnesses (§ 262\*)—Conduct of Trial—Rebuttal Testimony.**—The trial court has a wide discretion in the matter of recalling witnesses, and its allowance of the introduction of testimony on rebuttal will not be disturbed in the absence of a palpable error.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3849-3851, 3852-3857; Dec. Dig. §§ 970, 971;\* Trial, Cent. Dig. §§ 148-150; Dec. Dig. § 62;\* Witnesses, Cent. Dig. §§ 797, 899, 904, 1165; Dec. Dig. § 262.\* 13 Va.-W. Va. Enc. Dig. 963.]

**Appeal and Error (§ 1067\*)—Instructions—Harmless Error.**—Where the instructions given fully and fairly submitted all the issues to the jury, and the evidence was such that no other verdict than that for plaintiff could have been properly found, the refusal of defendant's instructions must be considered harmless.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4229; Dec. Dig. § 1067.\* 1 Va.-W. Va. Enc. Dig. 604; 14 Va.-W. Va. Enc. Dig. 96; 15 Va.-W. Va. Enc. Dig. 71.]

Error to Circuit Court, Clarke County.

Action by A. L. Warthen against E. B. Jacobs. Judgment for plaintiff, and defendant brings error. Affirmed.

*Marshall McCormick* and *F. B. Whiting*, both of Berryville, for plaintiff in error.

*Downing & Weaver*, of Front Royal, for defendant in error.

#### CITY OF LYNCHBURG *v.* AMHERST COUNTY.

Nov. 20, 1913.

[80 S. E. 117.]

**1. Bridges (§§ 10, 21\*)—Ownership and Maintenance—Authority of County.**—Under the general law, a county has no power to unite with a city in purchasing a bridge, nor may the county contribute to the care and maintenance of a bridge outside its territorial limits.

[Ed. Note.—For other cases, see Bridges, Cent. Dig. §§ 20-22, 48-55; Dec. Dig. §§ 10, 21.\* 2 Va.-W. Va. Enc. Dig. 623; 14 Va.-W. Va. Enc. Dig. 176; 15 Va.-W. Va. Enc. Dig. 144.]

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.